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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

LENA VERN DANDRIDGE, ET AL,
Respondents,

versus

JEFFERSON PARISH SCHOOL BOARD, ET AL,
Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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1100 North Causeway Boulevard
Metairie, La. 70004

ATTORNEY FOR PETITIONERS

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UNITED STATES COURT OF APPEALS
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TO THE HONORABLE THE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

Your petitioners, the Jefferson Parish School Board and others respectfully adopt, by reference, the entire petition of Albert B. Eason, and others, Intervenors, including both appendices. Your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Court to review the decision of the United States Court of Appeals for the Fifth Circuit in No. 71-2542, rendered on February 11, 1972, which affirmed an earlier judgment by the District Court of the United States for the Eastern District of Louisi-

ana, New Orleans Division, in civil action number 14,801, granting Respondent further relief as originally prayed for.

SUPPLEMENTAL ARGUMENT

The primary and main issue to be considered by this Court concerns the application of the Equal Protection Clause of the Fourteenth Amendment. More particularly, the question to be answered is whether the Equal Protection Clause requires a judicially admitted unitary school system to implement the forced busing of students out of their respective school districts to other school districts merely to achieve a racial balance of the entire student body.

Petitioners, in heavy reliance on a prior judgment of the District Court, (appendix C), are firmly convinced that it has operated a unitary school system on a completely non-racial basis prior to and continuously since the rendition of a previously rendered judgment. Though there remained nineteen neighborhood schools (in a system of seventy-five) that maintained a one race or predominantly one race student body, the system was operated on a totally integrated basis. Every one of the seventy-five schools operated with integrated faculties; there was a single transportation system which transported white and black students on a non-discriminatory basis; there was a fully integrated athletic program; all other extra-curricular activities, such as bands, drama, clubs, etc., were fully non-discriminatory; and, finally, all of the seventy-five school districts were created along geographic lines without regard to the prospective racial overtones.

Plaintiffs, on May 10, 1971, moved for further relief and particularly sought to have the District Court direct petitioners to formulate a new desegregation plan which *"through racial balance* would eliminate the *racial identification* of any particular school", (emphasis added). In addition, plaintiffs sought, inter alia, a change whereby the faculty of each school would be integrated "in substantially the same ratio of white to black teachers throughout the school system".

Petitioners re-urge in argument, the memorandum it has previously submitted to United States Court of Appeals for the Fifth Circuit in support of petitioners' motion for a Suspension and Stay of Injunction, dated August 18, 1971 (Appendix C).

WHEREFORE, petitioners pray that this Honorable Court will grant a Writ of Certiorari for the purpose of evaluating and reversing the decision of the United States Court of Appeals for the Fifth Circuit, No. 71-2542, and the Judgment of the District Court of the United States, Eastern District of Louisiana, New Orleans Division, Civil Action Number 14,801, and reinstating the previously Court approved plan for a unitary system in Jefferson Parish, Louisiana.

Metairie, Jefferson Parish, Louisiana, this ____ day of June, 1972.

WALLACE C. LeBRUN
1100 North Causeway Boulevard
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ATTORNEY FOR PETITIONERS

PROOF OF SERVICE

In furtherance of the Rules I have served 2 copies of the above and foregoing Petition for Writ of Certiorari upon all parties, by pre-paid mail, addressed to their Counsel, this ____ day of June, 1972.

WALLACE C. LeBRUN

APPENDIX C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

CIVIL ACTION
NUMBER: 71-2542

LENA VERN DANDRIDGE, et al

VS:

JEFFERSON PARISH SCHOOL BOARD, et al

MEMORANDUM IN SUPPORT OF MOTION FOR SUSPENSION AND STAY OF INJUNCTION

This matter originated with plaintiffs' complaint on July 30, 1964. It seeks a preliminary and permanent injunction enjoining defendants "from continuing their policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in the Parish and of assigning students, teachers and other school personnel to the schools operated and controlled by them on the basis of race". See paragraph II of complaint.

The complaint alleges that the schools which the black children attend are "all limited by defendants to attendance by Negro children pursuant to the policy, practice, custom and usage of defendants of operating a compulsory biracial school system and assigning school children therein and other personnel on the grounds of race".

In their said original complaint, plaintiffs prayed for eight different preliminary and permanent injunctions, all of which were based on the operation of a dual public school system which was then being operated on a racial basis.

The said matter was heard on August 10, 1964, and after hearing some evidence the Court referred the matter to a conference on a later date. The conference was held on August 24, 1964. On January 25, 1965 the Court a qua, in a written order held that "plaintiffs were entitled to a preliminary injunction as prayed for but that because of the short time remaining before the opening of the Jefferson Parish schools for the 1964-65 session and the many problems involved an order entered at that time which would require the Jefferson Parish School Board to discontinue the operation of a compulsory bi-racial school system in Jefferson Parish, Louisiana beginning with the 1964-65 term of school could not be complied with without seriously disrupting the school system to the detriment of the pupils of both races".

Further, the said order made the injunction efective with the opening of the 1965-66 school term. Defendants were enjoined from continuing to operate a compulsory bi-racial school system and were ordered to submit and file in this record, not later than March 31st, 1965, a plan which would "provide for the discontinuance of the compulsory bi-racial school system in Jefferson Parish, Louisiana".

On June 7, 1965, the District Court considering the law and the evidence ordered a plan of desegregation

to be placed in operation by August 31, 1965. The said plan called for the desegregation of certain grades in the 1965-66, 1966-67 and 1967-68 school years. It also called for implementing the "freedom of choice" concept, and set out guidelines for doing so.

A motion by plaintiffs for further relief was filed herein on June 21, 1968. A conference concerning this matter was held on July 5, 1968. On July 12, 1968 defendants were directed to submit another "plan for the assignment of all students for the 1968-69 school year upon the basis of a unitary system of non-racial geographical zones or a plan for the consolidation of grades or both . . .".

The defendants submitted a proposed plan but the Court found that it did not provide for a unitary, non-racial school system, but it did provide for further integration of the school system. The record reflects that although they submitted the plan, defendants did not recommend it, contending that the plan was neither educationally sound nor economically feasible.

On July 24, 1968, a hearing was held, at which time testimony was offered concerning the said plan. Another conference regarding this matter was held on August 20, 1968. On August 22, 1968 the Court, "after due consideration of the evidence, the argument of counsel and the law, and in light of the short period of time remaining before the scheduled opening of the 1968-69 school year" found that "it is not feasible to require the defendants to provide for a unitary, non-racial school system at this time and that to put into effect at this time the entire plan submitted by the defendants would be unduly disruptive and detrimental to the Jef-

ferson Parish School System". However, the Court did order the implementation of a portion of the proposed plan at that time. The order related to a few specifically named schools and involved a relatively few pupils. That order did not disturb the freedom of choice plan under which the system was then operating.

On February 3, 1969 the plaintiffs again filed a motion for further relief, seeking an order requiring defendants to submit a report on the progress being made in fashioning a plan which would provide for the desegregation of all schools in the Parish on a unitary non-racial basis for the 1969-70 school year and other relief concerning faculty assignments for that school year.

A hearing was set for February 19, 1969, at which time plaintiffs and defendants filed a joint motion in which it was suggested that it was agreed that the School Board would file in the record on or before February 28, 1969 a plan providing for desegregation of the Public School System of Jefferson Parish on a unitary non-racial basis of operation for the 1969-70 school year and a report on faculty assignment for that school year. The Court ordered that the School Board file the plan of desegregation and the report on the assignment of faculty on a non-racial basis contemplated by the joint motion.

In compliance with the court's order the School Board, on February 28, 1969, filed a plan for the desegregation of the school system on a unitary non-racial basis of operation for 1969-70 and a report on the proposed assignment of faculty on a non-racial basis for that school year. Maps indicating single districts were attached.

On April 18, 1969, plaintiffs filed exceptions to the desegregation plan submitted by the defendants and a hearing was had on the exceptions on May 17, 1969, at which time testimony was offered and the matter was taken under advisement. A conference regarding the matter was held by the Court on June 17, 1969.

On June 26, 1969, the Court rendered a judgment herein. I quote from that judgment:

> "Now, after due consideration of the law, the evidence and the arguments of counsel, the court finds that the plan providing for the desegregation of the Public School System of the Parish of Jefferson on a unitary non-racial basis of operation for the 1969-70 school year, submitted and filed on February 28, 1969, but not recommended by the Jefferson Parish School Board, is acceptable. The court further finds that the proposed faculty integration formula for the school year 1969-70 submitted by the School Board is also acceptable. The court further finds that the exceptions of the plaintiffs to the plan submitted are not well founded and must be overruled, accordingly.
>
> "IT IS ORDERED, ADJUDGED AND DECREED that the plaintiffs' motion for further relief be and it is hereby GRANTED.
>
> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, beginning with the 1969-70 school year, put into effect the plan providing for the desegregation of the Jefferson Parish School System on a uni-

tary, non-racial basis of operation which was submitted on February 28, 1969 by the Jefferson Parish School Board, but not recommended by it; and

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants put into effect, beginning with the 1969-70 school year, the faculty integration formula submitted by the Jefferson Parish School Board. The defendants are to report to the court when they have complied with the foregoing order.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the exceptions of the plaintiffs to the plan submitted be and they are hereby OVERRULED."

On August 29, 1969, a minor amendment to the judgment of June 26, 1969 was entered. It provided that pupils who were residing in two certain geographical zones who attended two certain schools in the 1968-69 school year be permitted to attend those same schools in the 1969-70 school year.

Defendant Jefferson Parish School Board moved for a rehearing of the Court's order of August 29, 1969, asking that the Court reconsider the freedom of choice method on the best method of operation of the Public School System in Jefferson Parish; that in the alternative, the Court issue an order permitting all students who desire to do so to attend the school which they attended during the 1968-69 school year; that, in the

second alternative, the Court issue an order requiring all students, without exception, to attend the schools in their unitary district. On September 19, 1969 the Court denied the motion of defendant.

The *Swann v. Charlotte-Mecklenburg Board of Education* case was decided by the United States Supreme Court on April 20, 1971. And on May 10, 1971 plaintiffs filed another motion for further relief asking that the defendant Jefferson Parish School Board be ordered to formulate a plan "that would provide for the desegregation of every school unit in Jefferson Parish on a proportionate basis of a 65-35 white-black ratio, so that there will be no basis for contending that one school is racially different from the others, and therefore, racially identifiable". The said motion also requested that the defendant board be ordered to assign faculty members to each school "on a basis substantially the same as the system-wide faculty racial composition, and to hire new teachers on a non-racial basis".

In plaintiffs' accompanying memorandum to its motion of May 10, 1971, they principally rely on the *Swann* case. They allege that they are entitled to facilities, as *Swann* puts it, "to prepare students to live in a pluralistic society". The plaintiffs contend that, "obviously then, whether segregation is de-jure or de-facto, the feeling of inferiority experienced by the members of the segregated race is equally vibrant and real and thus both segregations are constitutionally indecorous".

After two conferences with counsel for all parties the District Court, on July 9, 1971 ordered the Jefferson Parish School Board, in cooperative consultation with counsel for plaintiffs, formulate a desegregation plan for the public schools of Jefferson Parish. The plan was to comport with the requirements of *Swann* and was to be submitted not later than August 2, 1971, and was to be implemented in the 1971-72 school year. The order further commanded the Jefferson Parish School Board integrate the faculty of each school "so that the ratio of white to black teachers in an individual school reflects the ratio of white to black teachers in the school system as a whole".

The major controversy revolves about the issues of 1) providing a system of desegregation based on racial balance in relation to the currently existing white-black ratio of students and 2) providing forced busing of students from existing geographic zones for the sole purpose of achieving that racial balance.

On June 16, 1971, a motion for intervention was filed on behalf of Albert B. Eason and some 13,500 others who signed petitions to the Court decrying the forced busing of students from the geographic zones previously approved by the Court.

In conferences with the District Court Judge and counsel for all parties, it was pointed out that the Jefferson Parish Public School System encompasses schools on both sides of the Mississippi River and that busing of the pupils from one side to the other would be impractical. Counsel for all parties agreed that any

proposed plan that would be submitted would not provide for transporting pupils across the Mississippi River.

On August 2, 1971 the Jefferson Parish School Board, in compliance with the Court's order of July 9, 1971, submitted another desegregation plan but did not recommend its adoption. The District Court entered judgment approving the said plan on August 10, 1971.

Defendants respectfully contend that it is operating a unitary system on a non-racial basis and have been so operating since 1969 under the previously rendered Court order. The Board sincerely contends that even though there are several schools which are either all-white, all-black or substantially so, the said schools are so only as a result of de-facto segregation. The Board shows that the segregated facilities exist solely as a result of housing patterns. Not one governmental act was alleged or proved to show the existence of de-jure segregation.

Plaintiffs failed to produce a single witness to prove a single case of de-jure segregation. Counsel contended that the very existence of one-race schools was unconstitutional, completely by-passing the question of whether the segregation was de-jure or de-facto in nature.

Of course, without exception, all of the cases thus far decided by the United States Supreme Court that relate to public school desegregation are concerned only with de-jure segregation. Swann specifically re-

fers to de-jure segregation as violative of plaintiffs' constitutional rights.

Defendants strongly urge that the order of the District Court is erroneous. The defendants have been operating within all constitutional requirements and mandates. The August 10, 1971 order of the District Court amounts to an unwarranted and illegal interference with the operation of the Jefferson Parish Public School system and it provides alleged remedies relating to de-facto segregation only.

The only evidence adduced at the hearing on August 9, 1971 was conclusive in establishing that the boundaries for the individual school districts were created on a non-racial basis. However, the Court chose to disregard that evidence and apparently concluded, on its own initiative, that the mere existence of the one-race schools is violative of plaintiffs' constitutional rights in the premises.

At the hearing, defendants produced the planning director and one of his executive assistants (his other assistant at the time was out of town and unavailable for testimony). They both testified that no one at any time advised or instructed them to make any plans on a racial basis. Nor did they, in fact, make any plans discriminating against any pupil on account of race.

At several of the pre-trial conferences, the Superintendent for the Jefferson Parish Public School System assured the Court that the staff was, in fact, administering the system on a unitary non-racial basis. There

is a single busing program that transports white and black students alike, all of the schools are single district schools, i.e., the students are assigned to the schools that are located within the geographic boundaries for their respective districts, the faculties for all schools are substantially integrated, and all curricula and extracurricula activities are operated on an integrated basis.

The School Superintendent further testified that in every situation where there is a one-race school, it is so only because of the housing patterns that exist in each such district. For example, he testified that in the area bounded by the Airline Highway, Williams Boulevard in Kenner, Lake Ponchartrain and the Jefferson Parish-New Orleans line there are presently living only five negro families. He further testified that the children of those negro families were currently assigned to the schools in the districts where they reside. The area described by the superintendent encompasses fourteen elementary schools (grades 1-5) and two middle schools (grades 6-8) that were either all-white or predominantly all-white (but with integrated facilities).

On the South side of the Airline Highway in the upper portion of the Parish there exists long standing neighborhoods which are all-black or predominantly all-black. The composition of the neighborhoods has not seriously changed in many years. Reference is specifically made to the fact that the neighborhoods are the same as they were at the time in 1969 when the District Court found, after hearing evidence, that the Jef-

ferson Parish School Board was operating on a unitary non-racial basis. In that area there are two elementary schools that were all-black (but with integrated facilities) and one middle school which is predominantly all-black.

On the West side of the Mississippi River, due to housing patterns alone, there are only two elementary schools which are all-white and three elementary schools are all-black. All of those schools, however, have integrated faculties. All middle schools on the West side of the Mississippi are substantially integrated.

Finally, the defendants show that due to the relatively small number of high schools, all are substantially integrated. In fact, the composition of the high schools is not included in the Court's latest order, nor is it at issue.

The director of transportation for the Jefferson Parish School Board was brought to testify by defendants. He stated that he had studied the proposed plan of August 2, 1971, which was submitted by defendants. Based on his study and on the figures presented to him by the School Board's planning department heads, he calculated that some 3000 students who are residing within walking distances of the schools to which they are assigned will, under the proposed plan, be forcefully bused to schools outside of the district in which they reside. He opined that at least 90 per cent of those who will be bused are black children.

Further, the transportation director testified that he calculated that some of the children who will now be bused will have to travel more than 14 miles per day (round trip) and will be in transit for approximately one hour daily (one way). The new plan will require an average busing trip of over 7 miles in comparison with the present plan, which requires an average busing of approximately 2.5 miles. The witness testified that the new plan will require 20-30 additional buses and that that number of buses is not now available, that it takes approximately six weeks to get delivery of new buses, and that the Board would have to appoint new bus drivers and those drivers would have to be trained.

The District Court, in its reasons for judgment, states that, "There is little room for doubt that much of the busing which is required in Jefferson Parish is due to the past practices of a dual system, the vestiges of which have lingered on". Defendants respectfully suggest that there is not one bit of evidence in the record to substantiate that belief.

In ordering the defendants to implement this new proposed plan of August 2, 1971, the Court has created a situation that the defendant cannot control without causing serious harm to the educational program for the Jefferson Parish Public School System for the 1971-72 school year. There is an insufficient amount of time available to accomplish the results of the Court's order.

In previous situations in 1964 and again in 1968, under comparable circumstances, the Court has delayed im-

plementation of the relevant plans until the following school year. In each of those instances the Jefferson Parish School Board complied with the Court's orders without undue interference with its educational program. It cannot do so under the order presently in effect. It is respectfully suggested that the presently existing circumstances are more serious than those which existed in 1964 and 1968. In the 1964-65 school year there was an enrollment of approximately 48,500 pupils and busing was limited to single district geographic zones; under the new plan the expected enrollment will be approximately 63,000 pupils with approximately 3000 of those being transported outside their respective districts. Finally, the Court order will encompass the spending of approximately $210,000.00 for the additional buses that will be needed during the 1971-72 school year. The Court correctly points out that the defendant Board is reimbursed by the State of Louisiana in the approximate amount of $200,000.00. However, that reimbursement is on a budgeted basis and there is serious doubt concerning the availability of funds for the additional expense.

In conclusion, defendants respectfully pray that this Honorable Court grant an immediate order suspending and staying the injunction ordered by the District Court on August 10, 1971, pending appeal herein of the several important legal questions and unresolved issues presented here.

Counsel for intervenors is currently out of town and is unable to timely comply with the Court's letter request for counsel for plaintiffs-appellees to file a

response to the motion for suspension and stay of injunction pending appeal. However, Counsel for intervenors has requested that this memorandum be adopted by him on behalf of intervenors.

Metairie, Louisiana, August 18, 1971.

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